



# ITG News

## Keeping First Nations Informed



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July 2005

## Message From The Director

### Annual Customer Satisfaction Survey

As we begin the final quarter of the federal government's 2005 fiscal year, our office will be undertaking our annual Customer Satisfaction Survey. This will be our third year for the survey, which is a valuable tool that helps us better understand the federal tax administration needs of Indian tribal governments.

I want to take this opportunity to communicate how strongly I feel about the survey and how important the results are in the formulation of future activities. Our initial survey in 2003 showed a strong overall level of satisfaction but clearly demonstrated some differences between geographic areas. For example, tribes in Alaska told us that our Internet site at [www.irs.gov/tribes](http://www.irs.gov/tribes) was not user friendly, whereas tribes throughout the remainder of the country gave our web site high marks. We were able to follow-up and determine that the feedback from the Alaska tribes related primarily to access problems that are compounded by the lack of major communication infrastructure in rural Alaska. Our activities were then directed to better meeting their needs through the issuance of a CD-Rom to the tribal villages that contained common tax forms and publications relating to tribal tax issues.

Our second annual survey in 2004 yielded feedback related to the lack of adequate ITG staffing in the Pacific Northwest and navigational confusion with the landing page of our web site. We were able to address the staffing concern by hiring two additional ITG Specialists in Washington and Alaska as well as relocating the area manager to Portland as the opportunity arose. We have worked diligently to reconfigure the entire structure of our web site to make it easier to locate needed information and more easily navigate between pages. The feedback from the 2004 survey started that process, and the Advisory Committee to the TEGE Commissioner helped us through the process by contributing suggestions and providing feedback on proposed changes.

The 2005 Customer Satisfaction Survey will be mailed to each tribe in July. I urge you to complete it and return it in the postpaid envelope as soon as possible. All responses are anonymous unless you choose to identify yourself, but your feedback is invaluable to us. As always, we will publish a summary of the results as well as a listing of activities we will undertake to further improve our performance. I want to thank everyone in advance for their participation in this vital process.

**Christie Jacobs**



### Inside this issue:

Message From The Director	1
Calendar of Tax Events	2-3
Pictures of PNW & ITG Members	4
Avoiding Tribal Credit Card Abuses - Creating Effective Internal Controls	5
Suspicious Activity Reports - Are You Filing?	6
Arbitrage Rebate Requirements Applicable to Tax Exempt Bonds	7-9
Help Tribal Members Resolve Tax Problems With The Internal Revenue Service (IRS)	10
Fishing	11
ITG Area Contacts	12

# Federal Tax Calendar for Third Quarter 2005

## July 2005

SUN	MON	TUE	WED	THU	FRI	SAT
					1 * Make a deposit for 6/25-6/28	2
3	4	5	6	7 * Make a deposit for 6/29-7/1	8 * Make a deposit for 7/2-7/5	9
10	11 Employees earning tips in excess of \$20 in June must report amount to employer	12	13 * Make a deposit for 7/6-7/8	14	15 Make a deposit for 7/9-7/12 ** Make a deposit for June if a monthly depositor	16
17	18	19	20 * Make a deposit for 7/13-7/15	21	22 * Make a deposit for 7/16-7/19	23
24	25	26	27 * Make a deposit for 7/20-7/22	28	29 * Make a deposit for 7/23-7/26	30
31						

## August 2005

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3 * Make a deposit for 7/27-7/29	4	5 * Make a deposit for 7/30-8/2	6
7	8	9	10 * Make a deposit for 8/3-8/5 Employees earning tips in excess of \$20 in July must report amount to employers	11	12 * Make a deposit for 8/6-8/9	13
14	15 ** Make a deposit for July if a monthly depositor	16	17 * Make a deposit for 8/10-8/12	18	19 * Make a deposit for 8/13-8/16	20
21	22	23	24 * Make a deposit for 8/17-8/19	25	26 * Make a deposit for 8/20-8/23	27
28	29	30	31 * Make a deposit for 8/24-8/26			

\* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

\*\* = Make a Monthly Deposit if you qualify under that rule.

**NOTE: Deposits made through EFTPS are due one day prior to the dates listed.**

## September 2005

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2 * Make a deposit for 8/27-8/30	3
4	5	6	7	8 * Make a deposit for 8/31-9/2	9 * Make a deposit for 9/3-9/6	10
11	12 Employees earning tips in excess of \$20 in August must report amount to employer	13	14 * Make a deposit for 9/7-9/9	15 ** Make a deposit for August if a monthly depositor	16 * Make a deposit for 9/10-9/13	17
18	19	20	21 * Make a deposit for 9/14-9/16	22	23* make a deposit for 9/17-9/20	24
25	26	27	28 * Make a deposit for 9/21-9/23	29	30 * make a deposit for 9/24-9/27	

\* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

\*\* = Make a Monthly Deposit if you qualify under that rule.

**NOTE: Deposits made through EFTPS are due one day prior to the dates listed**

### Return Filing Dates

#### July 1st

- > Form 11-C for the Occupational tax if you are in the business of taking wagers

#### August 1st

- > File Form 941 for the 2nd quarter of 2005. If all deposits paid on time and in full, file by August 10th.
- > File Form 730 and pay the tax on applicable wagers accepted during June.

#### August 31st

- > File Form 730 and pay the tax on applicable wagers accepted during July.

#### September 30th

- > File Form 730 and pay the tax on applicable wagers accepted during August.



Pictured to the left are the current members of the Pacific Northwest group. Bottom row, Michael Fehrenbacher, Vancouver; John Mandeville, Spokane; Joe Kincaid, Manager, Portland; Judy Pearson, Anchorage; Melodie Gren, Spokane. Top row Mary Jo Audette, Anchorage; Connie Perkins, Salem; Carol Czolowski, Ogden.

Shown below are all the members of ITG. This includes five field groups, OPR (Operations, Planning & Review), ADAPT (Abuse, Detection And Prevention Team) and the centralized support group. The pictures on this page were taken at our recent training in Phoenix, Arizona.



## **Avoiding Tribal Credit Card Abuses – Creating Effective Internal Controls**

As tribes have continued to develop their economies and found an increased need to have employees travel on tribal business, they need to be cognizant of the creation and maintenance of effective internal controls over tribal charge cards and travel reimbursement programs.

The initial step is to determine the authority granted to employees to use tribal charge cards to pay for travel expenses. Many tribes have issued credit cards to the tribal council members and key operating officials of tribal enterprises. This procedure generally includes a provision where the tribal finance office receives the credit card invoices and directly pays the expenses. It allows the tribal official to avoid carrying large sums of cash or traveler's checks or having to use a personal charge card. Such processes are common, but tribes will usually want to carefully control the distribution of cards that are in the name of the tribe/tribal entity and the level of authority granted to those who have them in their possession. It is a general practice to issue such cards only to those individuals who travel on a regular basis on behalf of the tribe.

The second and most crucial step is the establishment of "accountability" for the expenses. The fact that the tribe/tribal entity may be directly billed for the expenses of the individual and pays such expenses on their behalf does not eliminate the need for the individual to properly document the purpose of the expense. Tribes need to ensure that expense reports are filed, actual receipts are provided that match each charged expense and the business purpose for the expense is clearly established. The expense reports should be reviewed by an independent party within the tribal administration to maximize the integrity of the process. Any issues that cannot be resolved by the individual making the charge must be brought to the attention of tribal finance officials. Amounts which are not properly documented as being directly related to official tribal business will constitute taxable income to the individual and must be reported as such on Form W-2 for employees at the close of the calendar year.

While most tribes follow strict procedures that meet or exceed these requirements, cases have surfaced in recent months where there have been abuses. These cases have involved personal use of tribal charge cards as well as situations where the tribe has paid an expense twice – once as a directly billed cost on a tribal card charge and again as a payment to the individual through an advance or expense report that was never reconciled to the charge card bills.

We encourage every tribe that allows tribal employees/officials the use of charge cards issued in the name of the tribe, to conduct a periodic review of their procedures to ensure that adequate internal controls are in place. Your assigned ITG Specialist is available to assist in that process or to address any questions you may have regarding the potential tax consequences of inappropriate charge card use. Working together, we can eliminate potential problems and better protect tribal revenues for the benefit of members and tribal programs.

### **Publication 4268—Employment Tax Guide for Tribes**

**Our on-line Employment Tax Guide continues to receive a very positive response from tribal payroll and finance employees.**

**You can download this comprehensive guide from a link on our landing page at [www.irs.gov/tribes](http://www.irs.gov/tribes).**



## Suspicious Activity Reports - Are You Filing?

Reporting suspicious transactions is essential to an effective anti-money laundering program. In fact, law enforcement personnel have generally found that Suspicious Activity Reports by Casinos (SARCs) are one of their most valuable tools for combating crime. Tribal casinos were required to file these reports as of March 25, 2003. Our office, Indian Tribal Governments, conducted extensive outreach and mailings to tribal casinos about the change, and we continue to assist tribes in being compliant.

We recently reviewed the filing patterns by tribal casinos. The number of SARCs filed by tribal casinos is very low when compared to similar commercial casinos. While we have not analyzed the cause, we want to take this opportunity to re-state the requirement to report suspicious transactions and to again offer our assistance in helping casino staff become familiar with this requirement.

While the data required to fill out a SARC is similar to that required for a Currency Transaction Report by Casinos (CTRC), the rules are different. For example, a CTRC must be filed to report currency transactions involving over \$10,000, but the dollar threshold for reporting suspicious transactions is \$5,000. However, a suspicious transaction below \$5,000 can be reported.

But what is a suspicious transaction? The regulations say that it is any transaction that the casino knows, suspects, or has reason to suspect:

- Involves funds derived from illegal activity
- Is intended to hide or disguise funds derived from an illegal activity as part of a plan to violate or evade any federal law or regulation
- Is designed or structured to evade any part of the Bank Secrecy Act
- Has no business or apparent lawful purpose
- Is not the sort the particular customer would normally engage in, or
- Involves the use of the casino to facilitate criminal activity

The SARC rule does not require that casinos review every transaction of \$5,000 or more. Instead, it is intended that casinos evaluate customer activity and relationships for money laundering risks using the casino's knowledge of what is "normal" or usual gaming activity.

Every casino must have a written compliance program that is designed to assure compliance with the Bank Secrecy Act (BSA). A good anti-money laundering compliance program should reinforce a casino's efforts to detect suspicious activity. It should include procedures for monitoring transactions in light of the compliance risks that a casino faces. Training casino employees about SARCs and suspicious transactions must be part of the program. Since their day-to-day jobs give them the knowledge to recognize transactions that are outside the norm, the casino employees, especially those who work in the cage, on the floor, and in surveillance, are the ones who are mostly likely to recognize suspicious activity.

Although suspicious transactions of \$5,000 or more **must** be reported, casinos are encouraged to **voluntarily** report suspicious transactions below \$5,000. An example of this is the submission by a customer of an identification document that you suspect is false or altered.

Suspicious transactions are reported on FinCEN Form 102 Suspicious Activity Report for Casinos. The form must be filed within 30 days after the casino becomes aware of a suspicious transaction. After filing the SARC, the casino must maintain a copy of the form and the original related documentation (or business record equivalent) for a period of five years from the date of filing.

In situations that require immediate attention (for example, where a delay in reporting might hinder law enforcement's ability to fully investigate the activity), casinos should immediately telephone the appropriate law enforcement authority in addition to filing a SARC. Casinos may also want to call FinCEN's Financial Hotline (1-866-556-3974). This number is used by businesses that want to voluntarily report suspicious transactions that may relate to terrorist activity. More information is available at the website <http://www.fincen.gov>. If you would like further explanation or help with your BSA compliance program, please contact your local ITG Specialist. We are available to help you with setting up your anti-money laundering compliance program, training your employees about the Bank Secrecy Act, or answering any other questions you may have.

# Arbitrage Rebate Requirements Applicable to Tax Exempt Bonds

by Steven A. Chamberlin  
Tax Law Specialist, Tax Exempt Bonds

Section 7871(a)(4) of the Internal Revenue Code provides that Indian tribal governments shall be treated as a State for purposes of issuing tax-exempt bonds under section 103 subject to the limitations in section 7871(c). Section 7871(c) of the Code authorizes certain Indian tribal governments, recognized by the Secretary of the Treasury through published revenue procedure, to issue tax-exempt bonds only if certain percentages of the proceeds of the bond issue are to be used either in the exercise of an essential governmental function or to finance the construction of certain qualified manufacturing facilities.

Tax-exempt bonds are valid debt obligations of state, local, or Indian tribal governments, commonly referred to as "issuers" - the interest on which is tax-exempt. This means that the interest paid to bondholders is not includable in their gross income for federal income tax purposes. This tax-exempt status remains throughout the life of the bonds provided that all applicable federal tax laws are satisfied. Various requirements apply under the Code and Income Tax Regulations including, but not limited to, arbitrage yield restriction and rebate requirements applicable to investments acquired with the proceeds of tax-exempt bonds. The IRS encourages issuers of tax-exempt bonds to implement procedures that will enable them to adequately safeguard against post-issuance violations that result in loss of the tax-exempt status of their bonds.

Tax-exempt bonds, including those issued by Indian tribal governments, lose their tax-exempt status if they are arbitrage bonds under section 148 of the Code. In general, arbitrage is earned when the gross proceeds of a bond issue are used to acquire investments that earn a yield materially higher than the yield on the bonds of the issue. The earning of arbitrage itself does not necessarily mean that a bond issue consists of arbitrage bonds. However, a deliberate, intentional action to earn arbitrage taken by the issuer or any person acting on either the issuer or borrower's behalf, after the issue date, will cause the bonds of an issue to be arbitrage bonds *if* that action, had it been reasonably expected on the issue date, would have caused the bonds to be arbitrage bonds. Intent to violate the requirements of section 148 of the Code is not necessary for an action to be intentional.

Two general sets of requirements under the Code must be applied in order to determine whether bonds are arbitrage bonds: the yield restriction requirements of section 148(a); and the rebate requirements of section 148(f). An issue may meet the rules of one of the above regimes yet fail the other. Even though interconnected, both sets of rules have their own distinct requirements and may result in the need for a payment to the U.S. Department of the Treasury in order to remain compliant. The following is an overview of the basic requirements of these two general rules. Additional requirements or exceptions, beyond the scope of this article, may apply in certain instances.

## The Yield Restriction Requirements

The yield restriction rules of section 148(a) of the Code and section 1.148-2 of the Regulations generally provide that the direct or indirect investment of the gross proceeds of an issue in investments earning a yield materially higher than the yield of the bond issue causes the bonds of that issue to be arbitrage bonds. While certain exceptions may be available, when applying these rules to different investments, "materially higher" is generally as follows:

<i>Type of Investments</i>	<i>Materially Higher</i>
general rule for purpose and non-purpose investments	1/8 of one percentage point
investments in a refunding escrow	1/1000 of one percentage point
investments allocable to replacement proceeds	1/1000 of one percentage point
general rule for investments in tax-exempt bonds	no yield limitation

Continued on the next page

## Arbitrage Rebate Requirements Applicable to Tax Exempt Bonds Continued

However, the investment of proceeds in materially higher yielding investments does not cause the bonds of an issue to be arbitrage bonds in the following three instances: 1) during a temporary period (i.e., generally, 3-year temporary period for capital projects and 13 months for restricted working capital expenditures); 2) as part of a reasonably required reserve or replacement fund; and 3) as part of a minor portion (an amount not exceeding the lesser of 5% of the sale proceeds of the issue or \$100,000).

In many instances, Indian tribal governments are allowed to make "yield reduction payments" to the U.S. Department of the Treasury to reduce the yield on yield-restricted investments when the yield on those earnings is materially higher than the yield of the bond issue. Yield reduction payments may be submitted by filing IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate* (see below).

### The Rebate Requirements

The rebate requirements of section 148(f) of the Code and section 1.148-3 of the Regulations generally provide that, unless certain earnings on non-purpose investments allocable to the gross proceeds of an issue are paid to the U.S. Department of the Treasury, the bonds in the issue will be arbitrage bonds. The arbitrage that must be rebated is based on the excess (if any) of the amount actually earned on non-purpose investments over the amount that would have been earned if those investments had a yield equal to the yield on the issue, plus any income attributable to such excess. Under section 1.148-3(b) of the Treasury regulations, the future values (as of the computation date) of all earnings received and payments made with respect to non-purpose investments are included in determining the amount of rebate due.

There are, however, three spending exceptions to the rebate requirements available for tax-exempt bonds. Note that issuers, including Indian tribal governments, may still owe rebate on amounts earned on non-purpose investments allocable to proceeds not covered by one of the following spending exceptions, which may include earnings in a reasonably required reserve or replacement fund. Each exception is described as follows:

Spending Period	Spending Exception
6-month spending exception	Section 1.148-7(c) of the Treasury regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes that are incurred within 6 months after the date of issuance.
18-month spending exception	Section 1.148-7(d) of the Treasury regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes which are incurred within the following schedule: 1) 15% within 6 months after the date of issuance; 2) 60% within 12 months after the date of issuance; and 3) 100% within 18 months after the date of issuance.
2-year spending exception	Section 1.148-7(e) of the Treasury regulations provides that an exception to rebate is available with respect to construction issues financing property to be owned by a governmental entity or 501 (c)(3) organization when certain available construction proceeds are allocated to construction expenditures within the following schedule: 1) 10% within 6 months after the date of issuance; 2) 45% within 12 months after the date of issuance; 3) 75% within 18 months after the date of issuance; and 4) 100% within 24 months after the date of issuance.

Continued on the next page



## **Arbitrage Rebate Requirements Applicable to Tax Exempt Bonds Continued**

There is also an additional exception to the rebate requirements for certain small governmental issuers of tax-exempt bonds that have general taxing powers. A bond issue (other than a refunding issue) qualifies for the small issuer exception only if: 1) the issue is issued by an Indian tribal government with general taxing powers; 2) at least 95% of the net proceeds of the issue are used to finance the essential governmental purposes of the issuer; and 3) the issuer reasonably expects as of the issue date to issue, or in fact issues, \$5M or less in tax-exempt bonds during that calendar year. For this purpose, an Indian tribal government has general taxing powers if it has the power to impose taxes of general applicability which, when collected, may be used for its general purposes. The aggregation rules of section 148(f)(4)(D) of the Code should be considered when determining whether this exception applies.

### **Arbitrage Rebate/Yield Reduction Filing Requirements – Form 8038-T**

Issuers of tax-exempt bonds, including Indian tribal governments, file IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*, to make the following types of arbitrage payments: 1) yield reduction payments; 2) arbitrage rebate payments; 3) penalty in lieu of rebate payments; 4) the termination of the election to pay a penalty in lieu of rebate; and 5) penalty for failure to pay arbitrage rebate on time. This form, including instructions, can be downloaded from the Internet at [www.irs.gov/bonds](http://www.irs.gov/bonds).

A yield reduction payment and/or arbitrage rebate installment payment is required to be paid no later than 60 days after the end of every 5<sup>th</sup> bond year throughout the term of a bond issue. The payment must be equal to at least 90% of the amount due as of the end of that 5<sup>th</sup> bond year. Upon redemption of a bond issue, a payment of 100% of the amount due must be paid no later than 60 days after the discharge date.

A failure to timely pay arbitrage rebate will be treated as not having occurred *if* the failure is not due to willful neglect and the Indian tribal government submits a Form 8038-T with a payment of the rebate amount owed, plus penalty and interest. The penalty may be waived under certain circumstances. For more information, see section 1.148-3(h)(3) of the Treasury regulations.

### **Request for Recovery of Overpayment of Arbitrage Rebate – Form 8038-R**

In general, a request for recovery of overpayment of arbitrage rebate can be made when an issuer, including an Indian tribal government, can establish that an overpayment occurred. An overpayment is the excess of the amount paid to the U.S. Department of the Treasury for an issue under section 148 of the Code over the sum of the rebate amount actually due with respect to the issue as of the most recent computation date and all amounts that are otherwise required to be paid under section 148 as of the date the recovery is requested. The request can be made by completing and filing IRS Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*, with the IRS. This form, including instructions, can be downloaded from the Internet at [www.irs.gov/bonds](http://www.irs.gov/bonds).

More information about these and other requirements applicable to tax-exempt bonds is available on the IRS Tax Exempt Bonds website at [www.irs.gov/bonds](http://www.irs.gov/bonds). You may also contact your ITG Specialist for assistance.

### **Reporting Abuses/Schemes**

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian country. Working together can help ensure the integrity of tribal finances and eliminate the threats posed by individuals with schemes that appear “too good to be true” and often are. If you are aware of financial impropriety or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860 or via e-mail at [tege.itg.schemes@irs.gov](mailto:tege.itg.schemes@irs.gov)

## **Help Tribal Members Resolve Tax Problems With The Internal Revenue Service (IRS)**

Do you have tribal members who have tried everything to resolve a tax problem with the IRS but are still experiencing delays? Or facing what you consider to be an economic burden or hardship due to IRS collection or other actions?

Tribal members may be unable to provide for basic necessities such as housing, transportation or food because of IRS actions. A delay of more than 30 days to resolve a tax related problem or no response by the date promised may also qualify for assistance. If you have tribal members in these situations, they should request the assistance of the Taxpayer Advocate. You can help members of your community.

### **Launch a Taxpayer Advocate Service (TAS) Outreach Campaign**

Download free resources at [www.irs.gov/advocate](http://www.irs.gov/advocate) to help get the word out to individuals and families who are currently experiencing delays or facing economic hardships due to IRS collection or other actions.

- Run public service announcements and articles in local newspapers
- Through tribal service providers, distribute Publication 1546, "How to Get Help With Unresolved Tax Problems"

### **Publicize how to contact the Taxpayer Advocate Service**

- Publicize the Taxpayer Advocate Service toll-free phone number, [1-877-777-4778](tel:1-877-777-4778)
- For TTY/TTD help call 1-800-829-4056
- Publicize the telephone number listed in the blue pages of your phone directory for the Taxpayer Advocate Service office nearest you

### **Educate Tribal Members about what to expect from the Taxpayer Advocate**

Case Advocates will listen to Tribal members' point of view and will work with them to address their concerns. Advocates will provide:

- An impartial and independent look at the problem
- Timely acknowledgement
- Their name and toll free phone number
- Updates on progress
- Time frames for action
- Speedy resolution; and
- Courteous service

### **Consultation Policy Update**

We continue to progress with the issuance of an IRS/Tribal Consultation Policy. We have received feedback from Treasury Department officials, and are now making final edits to the draft policy that was developed jointly with tribal representatives. We plan to begin to implement the section of the policy that will direct a minimum of two annual listening meetings in early FY 2006. Our website will contain the latest news as we finalize the process and move forward to implement this long overdue policy.

## Fishing

### ACT Report

The Advisory Committee to the TEGE Commissioner has issued its annual report of recommendations, which is available on the ITG website at [www.irs.gov/tribes](http://www.irs.gov/tribes). We encourage everyone to review the report and to continue to provide input to the committee.

### What is IRC section 7873?

IRC Section 7873 provides that income derived by individual members of Indian tribes, or by a qualified Indian entity, from fishing rights-related activity is exempt from Federal and State income taxes.

### Who is covered by IRC section 7873?

Individual tribal members (either self-employed or as employees working for a qualified Indian entity) and the qualified Indian entity itself are covered.

Note: Wages are not exempt if paid by an employer who is not a tribal member or a qualified Indian entity. Wages are also not exempt if paid to an employee who is not a tribal member.

If you have any questions, please contact your ITG Specialist (see page 12 for listing).

The following individuals will be at the ITG booth at the Northwest Indian Gaming Conference and Expo in Tacoma, July 26-27, 2005: Joe Kincaid, Manager from Portland; Melodie Gren, Specialist from Spokane; Carol Czolowski, Specialist from Ogden. Please stop by and introduce yourself.

Michael Fehrenbacher, Specialist from Vancouver, will be participating in the TIP panel. If you have questions regarding the TRDA and GITCA agreements, please plan to attend.

To add your name or e-mail address to our mailing list, please contact us via e-mail at [Carol.A.Czolowski@irs.gov](mailto:Carol.A.Czolowski@irs.gov), or call Carol Czolowski at (801) 620-5048.

## ITG Area Contacts

### **PACIFIC NORTHWEST**

Alaska, Idaho, Oregon, Washington

### **SPECIALISTS**

#### **Mary Jo Audette**

Anchorage, AK  
907-271-6874  
MaryJo.Audette@irs.gov

#### **Carol Czolowski**

Ogden, UT  
801-620-5048  
Carol.A.Czolowski@irs.gov

#### **Michael Fehrenbacher**

Vancouver, WA  
360-696-7643 ext. 227  
Michael.Fehrenbacher@irs.gov

#### **Melodie Gren**

Spokane, WA  
509-353-0824  
Melodie.F.Gren@irs.gov

#### **John Mandeville**

Spokane, WA  
509-353-0816  
John.M.Mandeville@irs.gov

#### **Judy Pearson**

Anchorage, AK  
907-271-6949  
Judy.M.Pearson@irs.gov

#### **Connie Perkins**

Salem, OR  
503-399-5623 ext 251  
Connie.K.Perkins@irs.gov

#### **Joe W. Kincaid, Manager**

Portland, OR  
503-326-3132 ext 2  
Joe.Kincaid@irs.gov

### **Telephone, Internet, & Mailing Address**

- **Call: Customer Account Services** toll free **877-829-5500**
- **Visit: Indian Tribal Governments** Web site at **[www.irs.gov/tribes](http://www.irs.gov/tribes)**
- **Write: Internal Revenue Service**

Indian Tribal Governments SE:T:GE:ITG  
1111 Constitution Ave., NW  
Washington, DC 20224